

1 ALAN R. BRAYTON, ESQ., S.B. #73685  
 2 DAVID R. DONADIO, ESQ., S.B. #154436  
 3 FRANK J. ANDERS, ESQ., S.B. #227208  
 4 BRAYTON♦PURCELL LLP  
 5 Attorneys at Law  
 6 222 Rush Landing Road  
 7 P.O. Box 6169  
 8 Novato, California 94948-6169  
 9 (415) 898-1555  
 10 (415) 898-1247 (Fax No.)

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN FRANCISCO DIVISION

15 THEONI SALCEDO, *et al.*,

No. C 08-04381-BZ

16 Plaintiffs,

17 vs.

PLAINTIFFS' MOTION TO CONTINUE  
 CASE MANAGEMENT DEADLINES  
 PENDING TRANSFER

18 NEWPORT NEWS SHIPBUILDING  
 19 AND DRY DOCK COMPANY, *et al.*,

20 Defendants.

21 Pursuant to Civil L. R. 7-11 and 7-12, Plaintiffs respectfully move the Court for an Order  
 22 extending time as set forth in the Order of October 27, 2008 (Document 12) for the following  
 23 good cause:

24 On October 27, 2008, this Court issued an Order (Document 12) granting the Joint  
 25 Stipulation and Motion of the parties (Document 11) seeking to continue the case management  
 26 deadlines pending action by the Judicial Panel on Multidistrict Litigation ("JPML") to transfer  
 27 this action to the United States District Court for the Eastern District of Pennsylvania for  
 28 consolidated pretrial matters as part of Asbestos Multi-District Litigation (MDL #875).

On or about October 20, 2008, Defendants NEWPORT NEWS SHIPBUILDING AND  
 DRY DOCK COMPANY, and NORTHROP GRUMMAN SHIP SYSTEMS, INC. provided

1 notice of this action to the JPML and sought transfer of the case into the MDL.

2 Despite this notice to the JPML, the Clerk of the Panel has yet to issue its Conditional  
3 Transfer Order.

4 On December 11, 2008, staff for Plaintiffs' counsel contacted the Clerk of the Panel and  
5 was informed that they were in receipt of Defendants notice to tag-along into the MDL but that a  
6 Conditional Transfer Order was still pending.

7 On December 22, 2008, staff for Plaintiffs' counsel contacted the Clerk of the Panel and  
8 was informed that they a Conditional Transfer Order on this case was expected to be issued  
9 either the week of December 22, 2008 or the week of December 29, 2008, but that it could not  
10 yet be confirmed.

11 From the experience in other cases before the JPML, it is the practice of the Clerk of the  
12 Panel to issue a Conditional Transfer Order ("CTO") that, by its operation, becomes effective  
13 upon receipt by the Clerk of the United States District Court for the Eastern District of  
14 Pennsylvania. However, it is also the practice of the Clerk of the Panel to put into the Order the  
15 "condition" that the mailing of the Order to Pennsylvania be held off for 15 days to allow time  
16 for objection by any party. When such time has expired, the condition having been satisfied, the  
17 Clerk of the Panel sends the Order to the Clerk of the Pennsylvania Court, whereupon, by  
18 operation of the CTO, jurisdiction transfers.

19 Plaintiffs expect that deadlines set forth in the Order of October 27, 2008 will come to  
20 pass before the JPML's order is operative. As the parties agreed in their stipulation that sought  
21 the October 27, 2008 Order, a further continuance of this action (or a stay) would allow the  
22 transfer to take place, and allow pretrial matters to be handled by the United States District Court  
23 for the Eastern District of Pennsylvania. Granting this motion would promote judicial  
24 efficiency, allow consistency in pretrial rulings, and be most convenient to the parties.

25 ///

26 ///

27 ///

28 ///

1 For these reasons plaintiff respectfully request the Court VACATE its Order of October  
2 27, 2008 issue an Order STAYING this action pending the outcome of the MDL Panel's  
3 decision on the merits of the transfer. In the alternative, plaintiffs respectfully request that this  
4 Court continue the Case Management Deadlines to allow time for the JPML to act as expected.

5 Dated: December 23, 2008

BRAYTON❖PURCELL LLP

/s/ David R. Donadio

By:

David R. Donadio  
Attorneys for Plaintiffs

10 [PROPOSED] ORDER TO STAY  
11

12 IT IS HEREBY ORDERED that the hearing date and deadlines specified in the Order of  
13 October 27, 2008 (Document 12), are hereby VACATED and that this action is STAYED  
14 pending the outcome of the JPML's decision on the merits of the transfer.

15 Dated: \_\_\_\_\_

16 \_\_\_\_\_  
17 Bernard Zimmerman  
United States Magistrate Judge

18 [PROPOSED ALTERNATIVE] ORDER TO CONTINUE

19 IT IS HEREBY ORDERED that the hearing date and deadlines specified in the Order of  
20 October 27, 2008 (Document 12) are hereby VACATED.

21 IT IS FURTHER ORDERED that the following case management deadlines are  
22 continued as follows:

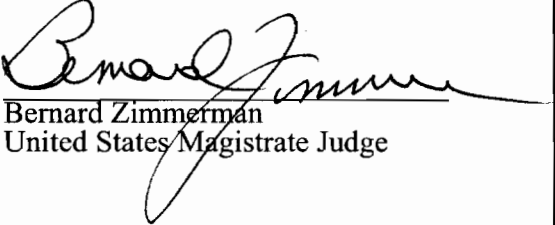
23 1. The Case Management Conference is [set for a date after April 20, 2009 to wit:]  
24 May 25, 2009; at 4:00 p.m., Courtroom "G", 15th Floor, 450 Golden Gate  
25 Avenue, San Francisco, California.

26 2. Last day to meet and confer re initial disclosures, early settlement, ADR process  
27 selection, and discovery plan is 21 days before the Case Management Conference in paragraph 1,  
28 above.

1           3.       Last day to file Joint ADR Certification with Stipulation to ADR process or  
2 Notice of Need for ADR Phone Conference is 21 days before the Case Management Conference  
3 in paragraph 1, above.

4           4.       Last day to complete initial disclosures or state objection to Rule 26(f) Report,  
5 file/serve Case Management Statement and file/serve Rule 26(f) Report is 5 court days before  
6 the Case Management Conference in paragraph 1, above.

7 Dated: 24 Dec 08

  
Bernard Zimmerman  
United States Magistrate Judge